

May 22, 2007

CONNECTME AUTHORITY  
ConnectME Authority Operation  
(Chapter 101)

ORDER FINALLY  
ADOPTING RULE

BRETON, Chair; DAVIS, WILSON, THOMPSON, and ADAMS, Members

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## **I. SUMMARY**

In this Order, we adopt final amendments to Chapter 101, ConnectME Authority Operation, as required by Title 35-A M.R.S.A. Chapter 93, in a major substantive rulemaking pursuant to 5 M.R.S.A. § 8071. In the revised rule we incorporate legislative changes made to our Provisionally Adopted Rule and make no further changes to the provisionally adopted rule.<sup>1</sup>

## **II. BACKGROUND**

On August 23, 2006, “The Advanced Technology Infrastructure Act” (35-A M.R.S.A. §§ 9201-9215, and 36 M.R.S.A. § 2017) (The Act) became effective. The purpose of the Act is to stimulate investment in Advanced Communications Technology Infrastructure to increase access to broadband and wireless services for all Maine communities, especially rural communities. The statute also authorizes the Authority to require annual contributions, up to .25 percent of instate revenues from communications services provided in Maine, to a ConnectME Fund to provide funding for the Authority and support of broadband development projects.<sup>2</sup>

By Notice of Rulemaking dated September 27, 2006, we initiated a rulemaking to adopt Chapter 101, a rule that describes the operation of the Authority. A public hearing was held on October 18, 2006, at which nine people provided oral comments, most of whom followed up with written comments.<sup>3</sup>

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<sup>1</sup> Resolve, Regarding Legislative Review of Portions of ConnectME Authority, Chapter 101, a Major Substantive Rule of the Governor’s Office, Resolve 2007, Ch 27 (signed May 16, 2007).

<sup>2</sup> The Act is contained in P.L. 2005, Ch 665, Section 3. P.L. 2005, Ch 665, Section 6, and authorizes a temporary transfer of \$500,000 from the Maine Universal Service Fund to the ConnectME Fund after the provisionally adopted rule is approved by the Legislature.

<sup>3</sup> Ben Sanborn, Telephone Association of Maine; Martin Rothfelder, T-Mobile; Jim Cohen, Verizon Wireless; Dan Riley, Sprint Nextel; Kim Kenway, U.S. Cellular;

We received written comments from: Aroostook Internet; AT&T Communications of New England (AT&T); Peter J. Brown; Cingular Wireless; Sam Elowitch; the Maine Internet Service Providers Association (MISPA); the New England Cable and Telecommunications Association (NECTA); Mainely Wired; Sprint Nextel; SJV Wireless; the Telephone Association of Maine (TAM); T-Mobile USA (T-Mobile); United States Cellular (US Cellular); Verizon Maine; and Verizon Wireless.

We also received two late-filed supplemental comments from TAM, on November 30, 2006, and December 5, 2006.

On December 28, 2006, we issued our Order Provisionally Adopting Rule.

### III. DISCUSSION OF FINAL AMENDMENTS

During the review of our Provisionally Adopted Rule by the Utilities and Energy Committee (LD 765), TAM objected to all of the language in section 6(D), Application Process, stating that more specificity was needed in the rule with a definitive set of criteria to be used in the content of the application and evaluating requests for support. TAM stated that the rule should contain much more detail regarding a cost-benefit analysis, prioritizing funding and need for Authority support, methods for ranking proposals, and guidelines for applications. TAM provided a proposed amendment to replace section 6 in its entirety.

As they had in written comments to the Authority during the rulemaking public hearing, a number of the cellular service providers objected to the detailed mapping requirements in the provisional rule, citing proprietary and financial burden concerns, and stating that the data would be quickly out of date and not useful.

Based on those comments the Utilities and Energy Committee, in Section 1 of the Resolve, authorized the rule only if the following changes are made:

Definition of broadband service provider. That portion of the rule designated section 2(D) is amended to provide that the definition of broadband service provider does not include a commercial mobile service provider as defined under United States Code, Title 47, Section 332(d);

Mapping requirement. That portion of the rule designated section 3(B) is amended to provide that a mobile communications service provider that is contributing to the ConnectME Fund is required to file with the Authority the coverage maps and service description information designated in sections 3(B)(1), 3(B)(2) and 3(B)(3) of the rule, but a mobile communications service provider that is not contributing to the ConnectME fund is not required to file that information; and

Application process. That portion of the rule designated section 6(D) is replaced to provide that within 90 days of the effective date of the rule, the Authority will establish an application process that, at a minimum, includes the following provisions:

A. An application that, at a minimum, includes: a description of the area proposed to be served by the project and sufficient information to establish that it is an unserved or underserved area; a description of the proposed project, including public-private partnerships that have been established, evidence that the private partner in the project is eligible to receive funding from the Authority, the type of service to be provided and, in the case of broadband service, the upstream and downstream speeds of the service to be provided, an estimate of the time required to complete the proposed project, the percentage distribution of households and businesses within the area to be served by the project and the estimated price per customer of the service to be provided by the proposed project; the total amount of funding requested from the Authority; the applicant's financial commitment to the project in addition to the funding requested from the Authority; the estimated number of customers who will directly benefit from the project who are currently unserved or underserved; and evidence of community support for the proposed project, which may include letters or signatures of residents or businesses located within the area of the proposed project; and

B. An application evaluation process that provides that the Authority concurrently evaluate all applications submitted during a particular application period that has been set by the Authority; that the scoring of applications is based on a 100 point scale with the following four scoring categories: cost-benefit, community support, project scope and project value; that the cost-benefit category is worth at least 33 points;<sup>4</sup> that a project with a total score of less than 50 points may not be funded; that a project that will serve an underserved area may only be funded if funds are available after all eligible applications for projects to serve unserved areas have been funded; that the cost-benefit scoring is based on relevant factors including, but not limited to, the amount of funding requested from the Authority per customer eligible to be served by the project, with lower funding per customer receiving a higher cost-benefit score; that the community support score is based on relevant factors including, but not limited to, evidence of community support for the project and the percentage of a municipality that will be served by the proposed project; that the score for the project scope is based on relevant factors including, but not limited to, the number of customers to be served by the project, the type, and when relevant the speed, of service to be offered by the project and the applicant's financial commitment to the project; that the score for project value is based on relevant factors including, but not limited to, the estimated price per customer to receive service from the proposed project and any other details of the project that may benefit customers in the area proposed to be served by the proposed project.

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<sup>4</sup> The Authority will determine the allocation of the remaining sixty-seven points across the other three scoring categories during the application development process, with an emphasis on project scope.

We, therefore, have amended the rule to reflect these changes.

**IV. ORDER**

Accordingly, we order

1. That the attached Chapter 101, ConnectME Authority Operation, is finally adopted;

2. That a copy of the Order and the attached rule be sent to:

The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015 (20 copies).

3. That notice of this Order is sent to:

All persons who indicated an interest in receiving information; and

All known Maine incumbent local exchange carriers, competitive local exchange companies, inter-exchange carriers, cellular companies, cable companies, internet service providers, and satellite service providers.

Dated at Augusta, Maine, this 22<sup>nd</sup> day of May 2007.

BY ORDER OF THE AUTHORITY

<signed>

Daniel B. Breton, Chair